

Statement of the Attorney General for the District of Columbia

Robert J. Spagnoletti

Before the

**Committee on the Judiciary
Phil Mendelson, Chairperson**

**Public Oversight Hearing
Fiscal Year 2005 and Fiscal Year 2006 Spending and Performance by
the Office of the Attorney General**



**Office of the Attorney General
District of Columbia**

Monday, February 13, 2006

**Council Chamber
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C.**

Good afternoon, Chairperson Mendelson, members of the Committee on the Judiciary, members of the Council of the District of Columbia, and guests. I am Robert J. Spagnoletti, Attorney General for the District of Columbia and I am pleased to appear before you this afternoon to discuss the performance of the Office of the Attorney General (the “Office” or “OAG”) during Fiscal Year 2005, and thus far in Fiscal Year 2006.

I. Introduction

This appearance marks my fourth oversight hearing as head of the Office. I am very proud to report that Fiscal Year 2005 was by far the most successful since my tenure at OAG began in June 2003. This success occurred despite a number of quite extraordinary challenges – professional, organizational, and resource-related – as I will discuss more fully later.

Among the extraordinary professional challenges during Fiscal Year 2005 were the civil lawsuits filed against the government arising from extremely progressive and novel statutes recently passed by the Council of the District of Columbia and signed by the Mayor: the AccessRx Act of 2004, the Terrorism Prevention in Hazardous Materials Transportation Act of 2005, and the Prescription Drug Excessive Pricing Act of 2005. These ground-breaking and labor-intensive cases pose enormously difficult legal issues and have consumed a large amount of staff and other resources. In addition, the Commercial, Civil Litigation, and Legal Counsel Divisions of the Office continue to be absorbed with the legal issues surrounding the return of Major League Baseball to the District.

The principal organizational challenge during Fiscal Year 2005 has been the consolidation of the 25 offices of subordinate agency general counsel into OAG, as required by the Legal Service Amendment Act of 2005. Under that statute, the transfer of approximately 90 attorneys and 20 support staff positions took effect on October 1, 2005. I thank the Council and the Mayor for supporting this initiative, which completes the unification of the Legal Service begun in 1999 and ends the unwieldy bifurcated reporting chain for agency counsel.

The third major challenge has been to satisfy the burgeoning demands on the Office with relatively limited human and physical resources. The men and women at OAG are extremely talented and hard-working – second to none. But they work with relatively little support and in physical

conditions that are less than satisfactory. With so few paralegals and secretaries, the attorneys perform the most basic clerical and administrative functions themselves. Moreover, although OAG is the largest tenant in One Judiciary Square, our space has not been updated since the building was opened nearly 15 years ago. These challenges notwithstanding, the quality of the work produced by the office remains extremely high.

II. OAG's Mission

As you know, OAG is charged by statute with conducting the District's law business. During Fiscal Year 2005, OAG's team of approximately 545 attorneys and support staff handled more than 21,000 cases and matters, covering some 300 different subject areas. Despite the unusually daunting professional challenges and resource constraints mentioned in my introduction, the attorneys and staff of OAG continue to provide excellent and timely legal service to citizens of the District of Columbia.

The mandatory and discretionary duties of the OAG and agency counsel include:

- Representation of the District in nearly all defensive civil litigation including tort, contract, civil rights, equity and class action cases;
- Appeals of Civil and Criminal Judgments;
- Child Abuse and Neglect cases;
- Adult criminal and juvenile delinquency proceedings;
- Antifraud, Antitrust and Consumer Protection matters;
- Civil Enforcement of Regulations;
- Neighborhood and Victim Services;
- Child Support Enforcement;
- Government Ethics Issues;
- Personnel and administrative proceedings;
- Domestic Violence and Mental Health matters;
- Real Estate and Procurement transactions reviews;
- Economic Development and Revenue Bond Financing;
- Land Use, Public Works and Utilities matters; and
- Reviews of Legislation and Rulemaking.

OAG also provides fundamental legal services to the District, including transactional work and legal advice to the executive branch agencies, the Council of the District of Columbia, the D.C. Courts, dozens of Boards and Commissions, and the Advisory Neighborhood Commissions (“ANCs”).

III. OAG’s Budget and Performance

I am pleased to report to this Committee and the citizens of the District of Columbia that OAG continues to make maximum use of available funds and substantial improvements in achieving its performance goals. Here are the facts for Fiscal Year 2005 and Fiscal Year 2006 to date:

In Fiscal Year 2005, OAG had an authorized total revised budget of approximately \$68.7 million and 520.5 FTEs. Of that sum, \$34.5 million were local funds. At the end of the fiscal year, OAG was left with \$568,559 in combined personal service and non-personal service local funds. Most of that amount, approximately \$559,989, was from reserve funds that were authorized but not spent to support OAG’s defense of the constitutional challenge to the Council’s Terrorism Prevention in Hazardous Materials Transportation Act of 2005. Excluding that amount, OAG spent all of its local funds, but for approximately \$8,570 of its personal service budget. While it is my goal to spend every authorized dollar, the fact that less than 0.02% of our local budget went unspent demonstrates that we are using our funds efficiently. Indeed, as in Fiscal Year 2004, last year we had virtually no unfilled locally funded FTEs.

In Fiscal Year 2006, OAG has an authorized total budget of approximately \$66 million and 545 FTEs, a reduction of approximately \$1.9 million and an increase of 24.5 FTEs from the revised Fiscal Year 2005 budget. We are currently on schedule with spending for this fiscal year.

As you know, many of OAG’s performance measures changed starting in Fiscal Year 2006 to better reflect how the Office actually conducts its business. I do not want to reprise all the Fiscal Year 2005 data here, which you already have from my November 2005 testimony. So let me instead focus on the most important of the old performance measures for Fiscal Year 2005 and then update our performance for the first quarter of Fiscal Year 2006 under the new performance measures.

- Goals for Litigation Programs. Our civil and criminal litigating divisions – Appellate, Civil Litigation, Family Services, and Public Safety – met or exceeded all except one of their six Fiscal Year 2005 performance measures:
 - Our affirmative civil trial litigators won over 97% of the time, as against a goal of 90%.
 - Our defensive civil trial litigators won almost 91% of their cases, also against a goal of 90%.
 - While it is a new measure for 2006, we kept track of the percentage of defensive appeals favorably resolved for the government in Fiscal Year 2005 and found that through September 30th the Appellate Division won 89% of the time, as compared with the new goal of 90%. During the first quarter of Fiscal Year 2006, the Appellate Division far exceeded the goal with a winning percentage of 95%.
 - Our prosecutors of adult offenses resolved 65% of the more than 9,000 adult cases presented, which substantially met the 75% goal in Fiscal Year 2005. Because this goal is almost impossible to meet due to the time it takes for these cases to wend through the court system, it has been replaced in Fiscal Year 2006 with the goal of 75% of adult criminal cases resolved in the government's favor. During the first quarter of Fiscal Year 2006, we essentially met that goal with a 73% score.
 - Our prosecutors of juvenile offenses saw to it that almost 93% of juveniles appropriately presented received rehabilitation services in Fiscal Year 2005, well beyond the 80% goal. During the first quarter of Fiscal Year we continued that excellent trend with an 88% score.
 - While it is a new measure for 2006, we collected data during Fiscal Year 2005 showing that the Family Services Division significantly exceeded the goal of 80% of family services cases presented and resolved favorably to the government's position. Through September 30, 2005, the Division met this goal over 97% of the

time. During the first quarter of Fiscal Year 2006 we upped that score to a whopping 99%.

- With a score of 88%, OAG substantially met the Fiscal Year 2005 goal of investigative reports meeting internal quality assurance standards for timeliness, accuracy, and completeness 90% of the time. This measure has been discontinued in Fiscal Year 2006.
- Goals for Legal Advice and Transactions Programs. Our Commercial and Legal Counsel Divisions each had a similar goal: to complete transactional agreements and documents (Commercial Division) and responses to requests for legal advice and review (Legal Counsel Division) within agreed-upon time frames 90% of the time.
 - The Commercial Division fell somewhat short of the goal with a score of almost 78%, while the Legal Counsel Division significantly exceeded the goal with a score of 97%.
 - During the first quarter of Fiscal Year 2006, the Commercial Division's score dipped a bit to 68%, while that for the Legal Counsel Division remained well above expectations at 98%.
- Goals for Child Support Program. More than 80,000 children depend on CSSD to receive funds needed for food, shelter, health care, and education. CSSD had four performance measures in Fiscal Year 2005, and it exceeded the three primary goals in spectacular fashion:
 - CSSD increased the number of support orders established by almost 22%, as compared with the goal of 2.5%, for a total of over 1,700 new orders. This means that of the 85,150 cases with which we closed the year, 40% (33,687) had orders.
 - CSSD increased total child support collections by over 9%, to more than \$62 million, as compared with the goal of 2.5%. Preliminary data for Fiscal Year 2006 show that CSSD is again exceeding these two goals.
 - As part of the collections in Fiscal Year 2005, CSSD increased arrears collections by an astounding 14.5%, again as compared

with the 2.5% goal. The latter goal has been discontinued in Fiscal Year 2006.

- Goals for Agency Management. There are five goals for this function, which provides operational support for OAG:
 - Two of the goals, cost of risk and percent variance of estimate to actual expenditure, are reported with city-wide figures.
 - A third goal, dollars saved by agency-based labor-management partnership projects, is unreportable and has been omitted in Fiscal Year 2006.
 - OAG met or exceeded its target goal of a rating of 4 out of 5 for telephone service quality during Fiscal Year 2005 based on the average score it received for courtesy, knowledge, etiquette and missed calls to the automated system and/or voicemail.
 - OAG exceeded the performance target of 70% for key results measures achieved because the Office met or exceeded the target under 10 of its 13 goals, for an overall score of 77%.

These outstanding results, including the almost 80% overall score, reflect the unyielding commitment, dedication and loyalty of OAG's highly talented staff.

IV. OAG Division Reports

Behind the statistics I just cited are cases and matters that directly affect the lives of District residents. OAG had numerous successes that I would like to spotlight now.

A. Child Support Services Division

As I mentioned, more than 80,000 children and their families receive money that passes through the District's child support system. It is the largest Division within OAG, utilizes the largest single share of OAG's budget, and affects thousands of District families. The child support system came to OAG from the Department of Human Services in 1998, and we are

committed to making the improvements necessary to ensure timely collection and disbursement of the funds.

I have already described the extraordinary increases in the number of new support orders established and the amount of child support receipts collected in Fiscal Year 2005. These results are attributable to the sustained effort and creativity of CSSD. Among the notable achievements this past year and during the current year so far are the following:

- CSSD held a hugely successful “Child Support Amnesty Program 2005,” more than doubling anticipated collections. Over 11,000 letters were sent to non-custodial parents in the District who were eligible for the amnesty program – parents who owed back-due child support and have not made payment arrangements. Amnesty was offered from August 1st – August 13th and more than 1,600 non-custodial parents took advantage of the program. Nearly \$240,000 in support payments were collected on behalf of the children of the District of Columbia. This was not a child support arrears forgiveness program. Instead, it afforded those parents who owed back child support the opportunity to get caught up on their payments before facing severe sanctions, such as arrest.
- The District’s federally-certified automated child support system needs to be renovated to modern standards. CSSD recently entered into an MOU with the Office of the Chief Technology Officer to initiate an RFP process to select an appropriate vendor for a feasibility study on the renovation. This phase of the project is expected to be 120 days and has an allocated budget of \$500,000. The second phase of the project, which will recommend the best alternative system and develop a proposal for federal approval as well as an RFP to acquire the recommended alternative, is scheduled to begin in June 2006 and to be completed in June 2008. The estimated budget for phase two is \$5.5 million.
- Every state is required to operate a state-wide child support distribution system. In December 2004 CSSD successfully transitioned the District’s State Distribution Unit (“SDU”) from the D.C. Superior Court to OAG and has maintained a 99.8% rate of support receipts processed in the same day. Also, in August 2005 CSSD successfully transitioned the wage withholding function from the Superior Court to OAG pursuant to

Council legislation. Since assuming that responsibility, CSSD has sent out approximately 6,000 wage withholding orders to employers.

- Electronic funds transfer (“EFT”) is a growing means of transmitting child support payments to and from the child support community. Because of the benefits associated with EFT, CSSD sought and found an SDU vendor in Systems & Methods, Inc. (“SMI”) that has a solid history of using EFT. During their 10 months of operation in Fiscal Year 2005, SMI processed \$12,751,500 in EFT from employers. This equates to an average of \$1,275,000 per month or a 28% increase over the last three months’ average for Fiscal Year 2004.
- CSSD continued its success with its driver’s license revocation program in Fiscal Year 2005. The process for driver’s license revocation and suspension was fully automated with the Department of Motor Vehicles (“DMV”) and runs quarterly. Since the beginning of the revocation program through September 2005, CSSD collected \$499,150.94 from non-custodial parents. During Fiscal Year 2005, CSSD’s Enforcement Unit interviewed 429 non-custodial parents after they received a warning letter notifying them of the pending revocation. CSSD submitted 1,326 names to DMV for license revocation because they did not respond to the warning letter, and DMV revoked 970 licenses. Those non-custodial parents who came to CSSD and made a lump sum payment and agreed to a payment plan regarding their arrears did not have their license revoked.

Of course, with a program as large and complex as child support, there are many hurdles to overcome. Because the child support program is regulated by the federal government, the District is subject to certain penalties if we fail to meet mandatory guidelines. While we have made substantial improvements in many areas, we still fall short and continue to incur fines. In Fiscal Year 2005 we met virtually all of the federal guidelines, and hope to meet the remaining measures this coming fiscal year. Overall, however, the child support program demonstrated substantial improvement during the past year and we will continue to make it a priority during the current year.

B. Family Services Division

The Family Services Division, which includes four Child Protection Sections, a Domestic Violence Section, and a Mental Health Section, touches the lives of our most vulnerable citizens. Here, again, we continue to demonstrate leadership:

- OAG attorneys represent the District and the Child and Family Services Agency (“CFSA”) in all child protection cases. This function is carried out by four OAG Child Protection Sections, one of which is devoted exclusively to Termination of Parental Rights (“TPR”) cases. During Fiscal Year 2005, the Family Services Division eliminated the backlog of TPR cases pending in the Family Court of the D.C. Superior Court. These cases are filed to facilitate the permanency goal of adoption where reunification with the family is not possible. The filing of TPR cases is consistent with the District and federal “ASFA,” the Adoption and Safe Families Act. In Fiscal Year 2005, OAG identified 448 cases in which a TPR was potentially appropriate. In collaboration with social workers from CFSA, Assistant Attorneys General (“AAGs”) then determined if a TPR motion was appropriate and filed a TPR motion within 30 days of that determination. If not, the collaborative team charted another path for permanency for the child. Ultimately, about one third of backlogged cases required the filing of a TPR motion (171 cases out of 448). During Fiscal Year 2005, OAG won a total of 43 of the 44 TPR trials held. Also, we are now keeping current with our TPR obligations so that a new backlog will not develop.
- The statutory deadline for trial/stipulation in child abuse and neglect cases is 105 days in cases where the child has been removed from the home. Court data reflect that the compliance rate for adjudication within 105 days of the filing of the petition was approximately 80 percent for Fiscal Year 2004. For Fiscal Year 2005, court data indicate that the compliance rate increased to 95%. Not only was the compliance rate extremely high, but the rate of successful adjudications for Fiscal Year 2005 remained over 97%. ASFA also requires that the Court hold the first permanency hearing within 12 months of entry into foster care. CFSA data reflect for Fiscal Year 2005 we met this deadline in 96% of cases.

- OAG provides direct legal representation to the majority of domestic violence victims seeking civil relief by appearing at the Domestic Violence Intake Center (DVIC) at the DC Superior Court, and at the satellite center at Greater Southeast Community Hospital. Approximately 3,487 people signed up for services at the DVIC in calendar year 2005. Approximately 1,461 people signed up for services at the satellite DVIC at Greater Southeast Community Hospital. The statistics show:

| Of the 4,387 who signed in and received assistance: | |
|--|-----|
| Received advocacy services | 75% |
| Received civil legal intake services | 72% |
| Sought child support assistance | 24% |
| Returned for additional civil legal assistance | 12% |
| Met with advocates regarding a related criminal matter | 11% |

| Of the 2,556 signing in who indicated where they live: | |
|---|-----|
| Ward 8 | 43% |
| Ward 7 | 19% |
| Ward 5 | 13% |
| Ward 4 | 10% |
| Ward 2 | 9% |

| Of those who utilized the Greater Southeast Hospital satellite center: | |
|---|-----|
| Reside in Ward 8 | 66% |
| Reside in Ward 7 | 26% |

| Of those who utilized the Superior Court DV Intake Center: | |
|---|-----|
| Ward 8 | 27% |
| Ward 5 | 20% |
| Ward 4 | 15% |
| Ward 7 | 15% |

- During the last two fiscal years we have shifted our focus to provide more representation to victims of domestic violence who would otherwise proceed through the system without a lawyer. Between October 1, 2004 and December 31, 2005, of the 1339 intake center cases

appropriately referred to OAG for legal representation, OAG offered representation to 852, or 64%.

- Our Mental Health Section is keeping up with the recent changes to the Ervin Act, including the new requirement in the Mental Health Civil Commitment Extension Temporary Act of 2004 that the Department of Mental Health (“DMH”) file a recommitment petition every year for all civilly committed patients. DMH now has 16 months to elect whether to file petitions for re-commitment for the 532 civilly committed patients (both in-patients at St. Elizabeths and out-patients in the community at a core service provider). As of December 31, 2005, OAG had already filed 64 recommitment petitions, recommitted 18 persons, and converted over 120 persons to voluntary commitment.

C. Public Safety Division

OAG’s Public Safety Division, including a Neighborhood and Victim Services Section, a Civil Enforcement Section, a Criminal Section, a Consumer and Trade Protection Section, and a Juvenile Section, helps to protect the safety of the District’s citizens:

- The Neighborhood and Victim Services Section (“NVS”) has two primary functions: 1) to provide aggressive, proactive assistance to victims and witnesses of juvenile crimes; and 2) to provide legal assistance and enforcement support with respect to civil and criminal violations related to quality of life and housing code violations within the District of Columbia. The NVS staff regularly attends Ward, community and CORE team meetings to listen to the legal needs of the community and work with our District and federal partners to address them. During Fiscal Year 2005 to date, NVS has had success with illegal drug nuisance properties, illegal dumping activities, abandoned autos, prostitution, unlicensed businesses, illegal construction, abandoned/vacant property and building code violations.
- To date, numerous criminal actions have been brought against the owners, builders and/or developers of property determined to be in violation of the law. Most recently, Oladele Dixon, the owner of 245 56th St., N.E., was arrested and charged with 296 counts of criminal housing code violations, and Frank Economides, the owner of 4825 Dexter Terrace, N.W., was charged with 1,480 counts of violating local building

laws (illegal construction). Additional actions (approximately 20 properties) are being considered against Dixon and Economides, as well as other identified violators. In the last major housing code violation case, Thomas and Anna John, the owners of 3500 13th St., NW, 4402 First Place, N.E., and 4411 First Place, N.E., were sentenced in December 2004 to 10 days in jail (suspended) with a term of one year of probation, were fined \$2,400 and \$1,200, respectively, in court costs, and were ordered to divest themselves of all property in the District of Columbia.

- The Victim Witness Assistance Unit (“VWAU”) in the NVS became fully staffed in September 2004, making Fiscal Year 2005 its first full year of operation. Prior to the creation of the unit, victims and witnesses of juvenile crimes had no assistance during the court process. The VWAU provides victims and witnesses with referrals and resources relative to any services needed as a result of the victimization, including social services, counseling, mental health services, food, shelter, clothing, crime victim’s compensation, and out-of-town travel arrangements. Now, victims and witnesses of juvenile offenses share virtually the same rights as victims and witnesses of adult crimes. Due to changes in the law that went into effect in Fiscal Year 2005, victims and eye witnesses are now allowed to observe Juvenile proceedings. An OAG Victim Witness Specialist (VWS) accompanies them and provides support and advocacy, as needed. Since October 2004, the VWAU assisted at least 68 victims and witnesses of juvenile crime obtain reimbursement of expenses from the Crime Victims Compensation Fund. Under a new OAG performance measure for Fiscal Year 2006, 100% of responding customers of the VWAU during the first quarter reported being satisfied with the services received, exceeding the goal of 90%.
- The Civil Enforcement Section successfully increased recovery revenues on behalf of numerous government agencies by an astounding 50% in Fiscal Year 2005. The Section’s recoveries totaled \$9,614,928, as compared to \$6,415,261 in Fiscal Year 2004. From total funds collected in Fiscal Year 2005, \$1.2 million went into OAG’s Antifraud Fund as the result of a \$4.8 million settlement under the District’s False Claims Act with the real estate firm of Cushman & Wakefield, the contractor/project manager for the renovation of the government’s office space at One Judiciary Square. OAG plans to hire one full-time attorney and one paralegal or investigator devoted exclusively to anti-fraud work.

- The Criminal Section had numerous successes in Fiscal Year 2005, ranging from outstanding results in a wide variety of cases (including cases involving pedophiles and parental kidnappers), to collecting hundreds of thousands of dollars in tax cases, to instituting a more stringent policy for the prosecution of drunk drivers that focuses on the most egregious offenders, to reshaping OAG's participation in the Superior Court's D.C. and Traffic Community Court to afford low-level defendants the opportunity to resolve their cases in a more meaningful way. The Section developed a comprehensive program to prosecute fraud, including welfare fraud, in the District of Columbia. OAG's tax and welfare Criminal Fraud prosecution program was responsible for the recovery or negotiated recovery of over \$600,000 in Fiscal Year 2005, as compared to just over \$200,000 in Fiscal Year 2004. During Fiscal Year 2006 to date that program has already recovered almost \$170,000.
- OAG shares criminal prosecution authority with the United States Attorney's Office ("USAO") for local offenses. During Fiscal Year 2005, OAG continued to make significant improvements in the manner in which it handles criminal cases. Better charging and plea policies, better case processing, and better training has resulted in the increase in the number of cases brought and the number of convictions from FY 2004 to FY 2005:

| FY | Total Cases | Convictions¹ | Conviction Rate |
|-----------|--------------------|--------------------------------|------------------------|
| 2004 | 8,295 | 2,290 | 28% |
| 2005 | 9,253 | 2,641 | 29% |

Moreover, a significant number of additional cases among those brought, approximately 2,100, were successfully resolved in other ways. For example, the Criminal Section, working with the Community Court, participates in a number of diversion or other programs aimed at allowing low level offenders alternative means of resolving their cases.

- The Criminal Section has engaged in preliminary discussions with the USAO regarding a comprehensive MOU to systematize charge-sharing

¹ Convictions, as used here, include only guilty pleas and finding of guilt at trial. It does not include cases where the defendant posted and forfeited collateral, nor does it include cases resulting in diversion.

on a more widespread basis. There are several existing agreements between USAO and OAG regarding charge-sharing, such as one providing USAO with authority to charge automatically Unregistered Firearm (“UF”) and Unauthorized Ammunition (“UA”) whenever it charges Carrying a Pistol without a License (“CPWL”), and another one providing OAG with authority to charge contempt arising out of violations of conditions of release in its own cases whenever there is a properly joinable charge within OAG’s jurisdiction. The anticipated MOU would further expand such charge-sharing in highly sensible ways, such as giving USAO authority to charge Possession of Open Container of Alcohol or similar offenses, any time that offense is the basis for an arrest leading to a felony charge, or giving OAG authority to prosecute false statements in appropriate welfare or other fraud cases. In both instances, the agreement would eliminate the need for more than one case, with more than one prosecutor, judge and defense counsel, arising out of what is clearly one incident, saving significant resources.

- Officer-less Papering is a pilot project that started in April 2001 as a joint effort among the Metropolitan Police Department (“MPD”), USAO and OAG to reduce the time officers spend papering cases. When there is an arrest in certain cases, MPD officers do not have to appear at OAG and spend time with an AAG reviewing the facts of an arrest and deciding whether to paper a case for prosecution. Rather, MPD officers compile all the paperwork needed and forward it to OAG for review. The project covers all Police Districts and all cases involving defendants released on citation to appear in court for arraignment on a future date who are charged only with one or more of 17 specific misdemeanor charges (traffic and D.C. offenses) prosecuted by OAG or three specific misdemeanors charged by USAO. During Fiscal Year 2005, MPD presented 1,098 Officer-less cases to OAG— a substantial increase over Fiscal Year 2004, when 644 such cases were presented. In the first quarter of Fiscal Year 2006, MPD has already presented 461 cases pursuant to the project.
- OAG has three special purpose funds that it maintains for public safety litigation: anti-fraud (as discussed earlier), anti-trust, and consumer protection. At the end of FY 2005, there was approximately \$1.6 million in OAG’s Antitrust and Consumer Protection Funds derived from case settlements and judgments. Presently we have one full-time attorney, one part-time attorney, and one paralegal devoted exclusively to antitrust

enforcement. For consumer protection, we have two full-time attorneys, one legal analyst, and one consumer protection specialist.

- The Consumer and Trade Protection Section litigated cases that produced monetary recoveries totaling \$1,031,909 in Fiscal Year 2005, including \$533,818 in consumer restitution. Examples are:
 - An agreement as part of a multi-state settlement with the insurance brokerage firm, Marsh & McLennan Companies, Inc. (“Marsh”), to resolve an anti-trust investigation regarding whether Marsh improperly influenced bidding by insurance companies to serve Marsh clients, thereby depriving the clients of the benefits of unfettered competition.
 - An agreement in the antitrust case OAG brought against CVS Corporation concerning the company's purchase and closing in 2002 of a competing pharmacy in the District's Palisades neighborhood. Under the agreement, CVS paid \$350,000 to the D.C. Pharmaceutical Resource Center's Interim Emergency Medication Project, to be used to provide chronically ill, uninsured District residents access to free medication from pharmaceutical manufacturers' patient assistant program. CVS also paid an additional \$125,000 into the District's antitrust enforcement fund and agreed, for a three-year period, to price constraints on its Palisades store and to continue delivery service from that store.
 - An agreement as part of a multi-state settlement with Philip Morris USA (“PM USA”) under which PM USA has agreed to incorporate protocols aimed at combating the illegal sale of PM USA cigarettes over the Internet and through the mail primarily to youth.
 - A D.C. Superior Court order against WorldWide Moving and Storage Company (“WorldWide”), prohibiting WorldWide from continuing to do business in the District because of its contempt of a December 2004 judgment in a consumer protection action brought by OAG. The contempt order prohibits WorldWide from operating in the District unless and until the court finds that it is prepared to operate consistently with the earlier judgment.

- OAG's consumer protection specialist, hired in Fiscal Year 2005, received over 590 consumer complaints in Fiscal Year 2005 via both phone and Internet, and helped to resolve a number of disputes between consumers and merchants, recovering more than \$25,000 for consumers.
- The Juvenile Section continued its strong performance, receiving more than 3,000 cases to prosecute and appropriately presenting and resolving 1,485 of them in Fiscal Year 2005. These efforts contributed to the overall reduction in juvenile crime in 2005. You may recall that my March 2005 oversight testimony highlighted the growing auto theft problem in 2003-2004 and the Juvenile Section's work to combat it, along with the USAO and MPD. I am extremely pleased to report that in Fiscal Year 2005 we saw an 18% reduction in the number of Unauthorized Use of a Vehicle cases. While total juvenile crime was down, there was a rise between calendar year 2004 and 2005 in robberies and weapons offenses by juveniles: a 43% increase in the number of robberies presented to the Section and a 14% increase in the number of weapons offenses presented. To address the increase in robberies, the Section participated in the Interagency Robbery Task Force, created by the USAO, which shares information about robbery arrests and routinely assists police officers and detectives in successfully closing cases around the area. To address the increase in gun-related offenses, OAG continued to designate one attorney to serve as the gun and gang prosecutor in the Project Safe Neighborhoods Initiative. This attorney coordinated the investigation, charging, and trial for all gun offenses presented to the Juvenile Section and served as a liaison to the USAO and law enforcement officers.
- The Juvenile Section continued its work on the District of Columbia School Attendance Initiative, handling all Compulsory School Attendance Act ("CSA") and Juvenile Truancy cases. For the 2004-2005 school year, OAG charged 168 parents for violations of the CSA – up from 96 cases in 2003-2004. Under the CSA, parents, guardians and caretakers can be criminally prosecuted if they fail to ensure that children in their custody or control are attending school regularly. However, as you will recall, rather than take a purely punitive approach, in 2003 the OAG created a deferred sentencing program, which is similar to a diversion, for such cases. That program continues today. Through deferred sentencing, first-time CSA defendants who have had no other criminal convictions, and who plead guilty to CSA charges, are given the

option, for a period of a least one full school year of supervision, to cooperate with services and to ensure that their children attend school without any unexcused absences or tardiness. In addition, in October 2005 – through the collaborative efforts of OAG, the Family Court, DCPS, and the Department of Health, for the second year in a row – approximately 40 parents who were charged with CSA violations for failing to get their children immunized in time to attend school had the opportunity to obtain those immunizations at the courthouse when they appeared in court for arraignment. Eligible parents were offered deferred sentencing on their previous offense of failing to send their children to school, once their children were immunized. Also, during Fiscal Year 2005 OAG brought charges against 84 teenagers for being habitually truant from school.

D. Civil Litigation Division

The Civil Litigation Division handles all of the defensive litigation brought against the District of Columbia. It had a banner year in Fiscal Year 2005, with an overall success rate of 91%. In Fiscal Year 2005 the 43 line attorneys in the seven litigation sections of the Division handled an average of 30 cases each – up from 26 cases in Fiscal Year 2004. The types of cases handled by the Division vary widely in subject matter, complexity, and potential impact. These cases include the following:

- The Division represented the District in class action and equity cases where numerous plaintiffs are seeking institutional change, sometimes along with money damages. These cases include *Jerry M.*, *Blackman-Jones*, *Petties*, *Evans*, *LaShawn* and *Dixon* and consume an enormous amount of staff hours working with the affected agencies, court monitors, plaintiffs, and appearing in court.
- Of the 215 cases resolved through settlement or judgment, in only 11 cases were there any monetary judgments against the government. In only 45 cases was the settlement or judgment \$50,000 or more. Of the 204 settlements; the amount in 93 cases (46%) was less than \$10,000. There were only two cases with a settlement or judgment in seven figures: a judgment of \$1.65 million against the University of the District of Columbia and a settlement of \$12 million in the *Marcus Bynum* class action suit against the Department of Corrections, which the court has

preliminarily approved and where plaintiffs alleged that thousands of inmates who were ordered released by the court had been subjected to illegal strip searches and were detained past the required release date. Under that agreement, \$3 million will be returned to DOC for program enhancements.

- After successfully settling one of the cases arising from the mass arrests at Pershing Park in the September 2002 World Bank/International Monetary Fund demonstrations, the Division continues to defend the three remaining such cases, *Barham*, *Chang*, and *Diamond*. We have filed motions for summary judgment in two of these cases.
- In *CSX Transportation, Inc. v. Williams*, the Division filed with the U.S. District Court an opposition to the motion of CSX, Inc. to prevent enforcement of the District's Terrorism Prevention in Hazardous Materials Transportation Act of 2005 and to declare the Act unconstitutional. Although the District prevailed in its opposition to that motion, the order denying CSX's motion for preliminary injunction was reversed by the U.S. Court of Appeals for the D.C. Circuit. The matter was remanded to the District Court where discovery is on-going.
- The Equity Sections triumphed in *Island Development Corp. v. D.C.*, where the trial court granted the government's motion for summary judgment and dismissed a suit seeking almost \$500 million for the government's alleged breach of a lease allowing the plaintiff to develop Children's Island and Kingman's Island. The court accepted our argument that the lease was unenforceable because supervening events outside the government's control prevented the lease from being carried out. This case is now on appeal.
- The Equity Sections also successfully defended two key baseball-related suits: 1) in *Southeast Development Associates v. D.C.*, the owners of several properties in the area of the proposed new stadium sought a preliminary injunction against the government's proceeding to acquire any properties for the stadium pending a hearing on their claim that the Chief Financial Officer's required cost re-estimation understated the actual costs, but the U.S. District Court denied their request for an injunction and issued an order on October 31st dismissing the lawsuit; and 2) in *Robert Siegel, Inc. v. D.C.*, the D.C. Superior Court dismissed a suit to enjoin the District from constructing the new stadium, holding, among

other things, that the plaintiffs would have an adequate remedy at law when the government initiated eminent domain proceedings in the form of an award of just compensation. These cases are now on appeal.

- In the consolidated cases of *Pharmaceutical Research and Manufacturers of America v. D.C.* and *Biotechnology Industry Organization v. D.C.*, plaintiffs challenged the District's Prescription Drug Excessive Pricing Act of 2005 ("Act"), claiming it was preempted by federal patent laws, violated the Commerce Clause and the Foreign Commerce Clause. Plaintiffs filed a motion for a declaratory judgment and injunction prohibiting the District from enforcing the Act. After full briefing and oral argument, the Court, on December 22, 2005, issued a Memorandum Opinion and Order declaring the Act unconstitutional and enjoining its enforcement. We have noted an appeal.

E. Appellate Division

OAG's Appellate Division is responsible for representing the District in all of its appellate matters in the D.C. Court of Appeals, the U.S. Court of the Appeals for the D.C. Circuit, and the Supreme Court of the United States. Highlights of the Division's outstanding record in Fiscal Year 2005 are:

- In *D.C. v. Beretta U.S.A. Corp.*, the D.C. Court of Appeals, sitting en banc, upheld the constitutionality of the District's strict liability law against gun manufacturers for injuries caused by machine guns and permitted the District to go forward with its claims to recover Medicaid, disability, and other expenses for persons injured by assault weapons and machine guns. In other gun litigation, the U.S. Court of Appeals for the D.C. Circuit upheld appellant's gun convictions in *Washington v. U.S.*, rejecting the argument that the Second Amendment guarantees a right to any firearm and accepting the District's argument, as intervenor, that the local gun laws are constitutional. And in *Seegars v. Ashcroft*, the same court sided with the District, holding that the plaintiffs lack standing for a pre-enforcement challenge to the District's gun registration and possession laws.
- In *Allegra v. D.C.* and *Goldring v. D.C.*, the U.S. Court of Appeals for the D.C. Circuit ruled that parents who settle their special education complaints against DCPS are not prevailing parties entitled to attorney's

fees under the Individuals With Disabilities in Education Act (“IDEA”) and that these parents also have no right to the reimbursement of expert witness fees.

- The jury verdict for the District was affirmed in *Roebuck v. D.C.*, a case against the Department of Corrections alleging employment discrimination, sexual harassment, and retaliation.

Pending appeals especially worth watching this year are:

- *Pharmaceutical Care Management Association v. D.C.*, where we are seeking to reverse the preliminary injunction against enforcement of the AccessRx Act.
- *Pharmaceutical Research and Manufacturers of America v. D.C.*, where we are seeking to overturn the permanent injunction against the Prescription Drug Excessive Pricing Act.
- *Agomo v. Williams*, where we are defending against a constitutional challenge to our photo enforcement system for catching speeding and red-light violations.
- *Craig v. D.C.*, where we are seeking reversal of the trial court’s judgment that the calendar year 2002 assessments in support of real property taxes for one-third of the property owners in the District are invalid.
- *Decatur Liquors v. D.C.*, where we are seeking to reverse the trial court’s judgment that the Council violated the two-reading requirement of the Home Rule Act in approving the Ward 4 moratorium on the sale of single containers of beer.
- *Lightfoot v. D.C.*, where we have filed an interlocutory appeal from an injunction by the U.S. District Court ordering the immediate reinstatement into the District’s government employees disability compensation program of all employees whose benefits have been terminated, suspended, or reduced since June 21, 1998. The case was argued on February 10, 2006.

F. Commercial Division

The Commercial Division continued to provide essential legal advice, transactional support and litigation assistance to economic development initiatives of the District. These included:

- The Real Estate Section, with help from the Legal Counsel Division, reviewed, commented on, and drafted a myriad of documents relating to the return of major league baseball to the District, including the negotiation for purchase of properties for the new stadium, the procurement of the services of Venable LLP for the eminent domain litigation, the filing of the complaint in that action, the construction administration agreement, the proposed lease for the new ballpark, the recent mediation over the proposed lease, the Ballpark Omnibus Financing and Revenue Act of 2005, and alternative financing plans. The Real Estate Section, working with the Mayor's Home Again Program, also was able to obtain title to more than 60 previously abandoned, vacant or nuisance residential properties that can now be returned to active homeownership and the tax rolls.
- The Procurement Section reviewed 66 separate contracts for CFSA, reviewed 55 proposed "retroactive" payments and proposed "ratifications" (both types of actions needing Council approval), conducted four major reviews before approving a proposed bus shelter contract that will generate an estimated revenue of \$166 million for the District over a 10-year period, and reviewed over 18 IFBs and RFPs involving major District procurements.
- The Land Use and Public Works Section worked with the Campaign for Inclusionary Zoning, the Office of Planning, and the Zoning Commission to resolve all legal and procedural issues related to a proposal to require that all new residential developments provide on-site affordable housing.
- The Economic Development Section drafted loan documents for the use of the Housing Production Trust Fund to finance the acquisition of at-risk affordable housing, completed loan and grant documents using local and federal funds to support affordable housing and economic development projects to benefit low to moderate income households and individuals (creating 1,617 affordable housing units), and provided legal advice related to the transfer of the 25-acre Camp Simms Site, which will be developed to include 75 single-family "for sale" housing units and an

approximate 100,000 square-foot shopping center, anchored by a 65,000 square-foot Giant Food Store and Pharmacy.

- The Tax, Finance, and Bankruptcy Section completed 23 separate bond closings, with assistance from the Legal Counsel Division, and won significant victories in two bankruptcy cases, *D.C. v. Suter* and *D.C. v. Yates*, establishing that fines imposed in consumer protection actions are not dischargeable in bankruptcy, so that the government is able to fully collect penalties imposed, and not have those reduced as if it were a general creditor.

G. Legal Counsel Division

In the course of the more than 1,500 legal memoranda that it prepared during Fiscal Year 2005, the Legal Counsel Division:

- Drafted a formal Opinion of the Attorney General, with help from the Commercial Division, covering a range of issues raised by operations of the D.C. National Capital Revitalization Corporation, including whether it is subject to federal and local anti-deficiency acts and what is the scope of its borrowing authority;
- Drafted, with help from the Public Safety Division, pending Bill 16-247, the “Omnibus Public Safety Act of 2005,” which contains 22 titles and addresses violent crime, crimes against children, prostitution-related offenses, and personal privacy; and
- Completed an analysis of the legal implications, under the First Amendment, of prohibiting retailers from renting or selling violent or obscene video games to minors triggered by the Mayor’s request for a formal Opinion of the Attorney General on Bill 16-125, the “Youth Protection from Obscene Video Games Act of 2005.”

The Division also provided legal advice to the Council of the District of Columbia, the D.C. Courts, and the ANCs.

V. Selected Initiatives for Fiscal Years 2005 and 2006

OAG carried out a number of significant initiatives during Fiscal Year 2005 that improved the efficiency and quality of the Legal Service. I am

also pleased to report that during Fiscal Year 2006 we are launching new initiatives to better serve the District's citizens. Let me highlight the most significant of these initiatives:

A. Realignment of Subordinate Agency Counsel

In Fiscal Year 2006, I began the official transition of the subordinate agency counsel into OAG. Relying on personnel, logistical, IT, resource and budgetary information gathered through a series of meetings with the affected agencies (including their directors), OAG implemented the transition plan developed by the Agency Counsel Transition Team in late Fiscal Year 2005 and the first quarter of Fiscal Year 2006. The immediate results are that, as shown in the attached copy of the implementing Office Order, these lawyers have been integrated into the OAG organizational structure, and are aligned with existing Divisions where individual Offices of General Counsel have a practical and legal relationship based on commonality of issues and the ongoing need to work together. Additionally, two new Divisions were created within OAG (Health and Human Services and Rulemaking and Legislative Affairs) to absorb agency counsel that did not readily fit into the existing organization. Finally, salaries have been "right-sized" and consistent position titles have been established that reflect duties performed and the new relationship with the OAG. OAG will continue to implement the other aspects of the transition plan throughout the remainder of the current fiscal year.

B. Realignment of CSSD

Because it is the largest single component of OAG and touches so many lives, it is critical that CSSD be managed effectively. In addition to continuing to hire talented people, during Fiscal Year 2005 I reorganized CSSD to provide better supervision and support to the staff who carry out the Division's many duties. The reorganized CSSD, as shown in the attached copy of the implementing Office Order, contains seven new sections reporting to CSSD's Director and one section that reports to OAG's Chief Fiscal Officer. The reorganization creates new management and supervisory positions to ensure that appropriate guidance and training are provided to all staff. It also ensures that sufficient qualified staff are assigned to required functions. I am very happy with the success of this new structure so far in making CSSD a better child support agency.

C. Creation of the Office of the Solicitor General

OAG's Appellate Division performs a vital function and has a good track record of success. In keeping with an October 2004 management review team report on the Division by the National Association of Attorneys General, I have decided to change the Division's name to the Office of the Solicitor General and the name of its leader to the Solicitor General for the District of Columbia. This change will better reflect the role of the Appellate Division and conform to the common nomenclature used by other Attorney General offices. The change will have the added benefit of enhancing the image and prestige of the Appellate Division's attorneys within the District's legal community. I am now in the process of interviewing internal and external candidates for the Solicitor General position and expect to make the appointment of the District of Columbia's first Solicitor General in the near future.

D. Creation of Office of Equal Employment Opportunity ("EEO")

For many years OAG has had committees of volunteers who received EEO complaints, provided counseling, and made recommendations to the Attorney General after investigating the complaints. However, no full-time staff member had been dedicated to overseeing the Office's EEO program. All that changed this year, when I created a new Office of Equal Employment Opportunity and hired as its first Director, Kim McDaniel, an attorney with more than 18 years of experience in employment and labor relations law in the public and private sectors. One of Ms. McDaniel's initial duties will be to review OAG's current EEO processes and make them more user-friendly. This is a critical task as we seek greater diversity at all job levels of OAG.

E. Continuing Training Program

The continued professional training of OAG's attorneys, including agency counsel, is of primary importance. During Fiscal Year 2005, OAG offered a host of training courses to attorneys, and 99% of OAG and agency counsel complied with the Legal Service Rules requirement of obtaining at least 12 hours of legal education credits during the evaluation period. We also offered a broad range of courses to our support staff. During Fiscal Year 2006, all attorneys will be required to take a 3-1/2-hour legal writing

course while all support staff must take a nine-hour course in writing spread over three days. We will be providing a mandatory electronic discovery course for all civil litigators and agency counsel. Moreover, we are planning an innovative diversity training program for all OAG employees.

F. Renovation of Office Space at One Judiciary Square

I have previously testified that, as the largest tenant in One Judiciary Square, OAG is also the only tenant whose space has not been refurbished since the building was placed into service over 13 years ago. That is a long time, given the intensive use we make of every available square foot of space. Not only is the space worn out but it is poorly designed for our current needs. I am extremely grateful that in the approved capital budget for Fiscal Year 2006 the Council included approximately \$3 million to renovate our space at One Judiciary Square and I look forward to the start of that work during the current year.

G. *Pro Bono* Legal Assistance from the Private Bar

In May 2005, we launched the Special Assistant Attorney General Program, which offers private attorneys the opportunity to gain invaluable, hands-on civil trial and/or appellate experience, while providing much needed additional staffing to handle our ever-increasing workload. Our first partner in this venture is the firm of Fulbright & Jaworski. They have agreed to provide to our Civil Litigation Division, on an ongoing basis, two attorneys for 20 hours a week, in six-month rotations. In addition, they have and will continue to provide attorneys to work on appellate cases on a more *ad hoc* basis. This has been an extremely successful and productive partnership. We have also had several other private attorneys volunteer their time to work in the Appellate and Public Safety Divisions. The Special Assistant Attorney General Program has been mentioned in articles in The Legal Times and The Wall Street Journal. Other private attorneys volunteer their time to work in the Appellate and Public Safety Divisions. Additional firms are interested in the Special Assistant Attorney General Program and we hope to expand the program in the coming year.

H. CSSD's Stored Value Card

CSSD will work with our partners, System & Methods, Inc. ("SMI") and JP Morgan EFS, during Fiscal Year 2006 to introduce our customers to

the “stored value card.” The stored value card offers the District a lower cost alternative to distributing child support payments by check. Child support funds will be electronically deposited into debit card accounts established and maintained at JP Morgan Chase Bank, using the same process as direct deposit into existing bank accounts. Our customers will have convenient 24-hour access to cash either at Automated Teller Machines or PIN-based retail Point-of-Sale locations, or they can use the card for purchases at more than 30 million locations where Visa debit cards are accepted. Stored value cards offer our customers a faster, safer, more convenient and economical alternative to receive their child support payments.

I. OAG’s Youth at Risk Initiative

OAG has launched its “Youth At Risk” initiative by involving the Attorney General in direct community outreach. The initiative, aimed at protecting the District’s youth, will be a multi-pronged approach. First, under “NetSmartz,” in partnership with the National Center for Missing & Exploited Children, I will give presentations in public and private schools (grades K-12) regarding the importance of staying safe on the Internet. These presentations will teach kids the skills they need to avoid becoming victims of child predators lurking online. Second, I participated in National Teen Dating Violence Awareness and Prevention Week and provided 15 complimentary toolkits to public and private high schools. The toolkits include awareness and prevention strategies for teens, educators and counselors. Third, because drunk driving is prevalent on college campuses nationwide, I will target local colleges and universities to warn students about the dangers of drinking and driving.

J. Partnership With Terrell Junior High School

In the spirit of good labor-management relations, during Fiscal Year 2004 OAG established a Labor-Management Partnership Council to provide a forum to address concerns, outside of the collective bargaining agreement, that arise from time to time between managers and union members. The Council also sponsored several community activities, including the rejuvenation of OAG’s partnership with Terrell Junior High School. After consultation with the school’s principal, OAG volunteers totally cleaned and redecorated the school’s library last summer. OAG also developed a successful academic enrichment program that currently meets on Saturday

mornings at the school.

K. Investment in the District's Law Library

OAG is the home of the District's law library, used by OAG, District Agencies, members of the judicial and legislative branches, and occasionally members of the public. Currently located in the basement of One Judiciary Square, the library is maintained by one OAG employee, a dedicated and talented 40-year veteran of the District government. Unfortunately, the library has been allowed to fall into disrepair because of lack of funding and long-term planning. During FY 2005, I established a Library Committee to review the collection, consider the needs of the OAG, examine the best practices at libraries within Attorney General offices across the country, and make recommendations on how to update and improve one of our most important legal resources. The Committee produced a very comprehensive and thoughtful report complete with realistic recommendations. Accepting their recommendations, this year, I intend to invest nearly \$100,000 into updating the library, culling unnecessary bound volumes, increase the reliance on electronic research, hire a full time librarian, purchase new computer hardware and software to support the collection, and work with the Office of Property Management on a possible relocation of the library to the 6th floor of One Judiciary Square. I also intend to purchase a set of DC Codes for each attorney in the Legal Service and ensure that the library budget has sufficient funds going forward to update the core collection. Given the importance of the work performed by OAG, it is critically important that we have sufficient and current legal research materials.

VI. Conclusion

I am proud to be the Attorney General for the District of Columbia and to serve with the exceptional men and women of OAG. I also look forward to working with this Committee, the Council, and the Mayor to make OAG everything it can be in the future.

Thank you for allowing me to appear before you today. I am happy to answer any questions.